

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

RANDALL N. WIIDEMAN,

Plaintiff,

vs.

KAREN SMITH,

Defendant.

Case No.: 2:09-cv-0598-RLH-RJJ

ORDER

(Amended Motion for Summary
Judgment—#71; Motion for Summary
Judgment—#73)

Before the Court is Plaintiff Randall Wiideman's **Amended Motion for Summary Judgment** (#71), filed April 8, 2010. The Court has also considered Defendant Karen Smith's Opposition (#72), filed May 3, 2010.

Also before the Court is Smith's **Motion for Summary Judgment** (#73), filed May 10, 2010. The Court has also considered Wiideman's Opposition (#76), filed May 18, 2010.

BACKGROUND

Plaintiff, who is currently incarcerated and appearing pro se, alleges that Defendant Karen Smith, an employee of the Southern Desert Correction Center, wrongfully opened and read his outgoing mail. Wiideman alleges Smith did so in retaliation against him for filing suit in an unrelated case against the prison warden and the assistant warden. On March 17, 2009, Wiideman filed suit in Nevada state court against Smith and alleged two 42 U.S.C. § 1983 claims—one under

1 the First Amendment and under the Fourteenth Amendment. On March 31, Smith removed the
2 case to this Court based on federal subject matter jurisdiction.

3 Both parties now move for summary judgment. While this is Smith's first motion
4 for summary judgment, this is the fourth time Wiideman has brought such a motion. Magistrate
5 Judge Johnston struck Plaintiff's first and second motions for summary judgment because they
6 were filed before the court had finished screening the case. This Court denied Wiideman's third
7 motion for summary judgment because his allegation that Smith wrongfully opened his mail was
8 not alone sufficient to justify summary judgment. For the reasons discussed below, the Court
9 denies Wiideman's amended motion for summary judgment, grants Smith's motion for summary
10 judgment, and closes this case.

11 DISCUSSION

12 I. Legal Standard

13 A court will grant summary judgment if "the pleadings, the discovery and
14 disclosure materials on file, and any affidavits show there is no genuine issue as to any material
15 fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An
16 issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could
17 find for the nonmoving party, and a dispute is "material" if it could affect the outcome of the suit
18 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). In
19 evaluating a motion, a court views all facts and draws all inferences in the light most favorable to
20 the nonmoving party. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982).

21 The movant bears the burden of showing that there are no genuine issues of
22 material fact. *Id.* "In order to carry its burden of production, the moving party must either produce
23 evidence negating an essential element of the nonmoving party's claim or defense or show that the
24 nonmoving party does not have enough evidence of an essential element to carry its ultimate
25 burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102
26 (9th Cir. 2000). Once the movant satisfies the requirements of Rule 56, the burden shifts to the

1 party resisting the motion to “set forth specific facts showing that there is a genuine issue for trial.”
 2 *Anderson*, 477 U.S. at 256; *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The nonmoving
 3 party “may not rely on denials in the pleadings but must produce specific evidence, through
 4 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME Hosps.,*
 5 *Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show that there is some
 6 metaphysical doubt as to the material facts,” *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S.
 7 574, 586 (1986).

8 **II. Wiideman’s Amended Motion for Summary Judgment**

9 In his amended motion for summary judgment, Wiideman provides additional
 10 information regarding why Scott opened his mail, his lawsuit against the prison wardens, and the
 11 administrative regulations that prohibit, in certain circumstances, the opening of inmates’ outgoing
 12 mail. This additional information, however, is not enough to justify Wiideman’s request for
 13 summary judgment because his entire motion rests on his uncorroborated assertion that Smith
 14 unlawfully opened his mail. Whether or not Smith did so is a factual issue that must be resolved at
 15 trial. Accordingly, the Court denies Wiideman’s amended motion for summary judgment.

16 **III. Smith’s Motion for Summary Judgment**

17 Smith argues she is entitled to summary judgment because Wiideman did not
 18 exhaust his administrative remedies prior to filing suit in this Court. The Court agrees with this
 19 assertion and grants Smith’s motion for summary judgment.

20 In 1995, Congress passed the Prison Litigation Reform Act and made it a
 21 requirement for inmates to fully exhaust their internal grievances before filing suit against prison
 22 officials. 42 U.S.C. § 1997; *see also Booth v. Churner*, 532 U.S. 731, 733 (2001). In addition, an
 23 inmate who (like Wiideman here) seeks money damages must exhaust all administrative remedies
 24 capable of addressing his grievances, regardless of the type of relief offered by the administrative
 25 process. *Booth*, 532 U.S. at 733. In 2002, the United States Supreme Court upheld the Prison
 26 Litigation Reform Act and reaffirmed that the exhaustion-of-internal-grievance-requirement is

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiff Randall Wiideman's Amended Motion for Summary Judgment (#71) is DENIED.

IT IS FURTHER ORDERED that Defendant Karen Smith's Motion for Summary Judgment (#73) is GRANTED.

The Clerk of the Court is ordered to close this case.

Dated: June 14, 2010.

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